**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 10896 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KAMRUDDIN @ MAMU HABIBBHAI KADIWALA (MOMIN)**
**Versus**
**STATE OF GUJARAT**

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**Appearance :**
Ms Qureshi for Mr MM Tirmizi for the petitioner

Mr ND Gohil, AGP for the respondents

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 12/07/2006**

**ORAL JUDGMENT**

By filing this petition, the petitioner has challenged the detention order of the detenu dated 10-2-2006, by which the detenu is detained as

a “bootlegger” under Gujarat Prevention of Anti Social Activities Act [hereinafter referred to as PASA Act]. With the detention order, the detenu is also served with the grounds of detention. In the grounds of detention, there is a reference to a solitary case pending against the detenu. The aforesaid case is registered as Gunah Register No.III-368/2005 under the Bombay Prohibition Act. It is alleged that the detenu is dealing in foreign liquor.

Ms. Qureshi, learned advocate for the petitioner submitted that except a solitary criminal case, there is no other material available for coming to the conclusion that the detenu is a “bootlegger”. She further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the detenu are prejudicial to public order or even tempo of public life is disturbed by his activities. It is submitted that at the most it can be said that the detenu has violated law and order and not public order. To substantiate her say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in **Darpan Kumar Sharma alias Dharban Kumar Sharma V. State of Tamil Nadu and Others**, reported in **AIR 2003 SUPREME COURT 971**, wherein it is held as under in paragraph 6 :

> “In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Section 379, IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of

> alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

Learned advocate for the petitioner also submitted that at the time when order of detention was passed against the detenu, he was already in judicial custody and the detaining authority has not pointed out as to on what basis it has come to the conclusion that the detenu will be released on bail on presentation of bail application.

Mr.N.D.Gohil, learned AGP is also not in a position to substantiate his say that the activities of the detenu are prejudicial to public health or that he has violated public order.

It is not in dispute that except a solitary criminal case, there is neither any statement of independent witnesses nor any document is available on record to suggest that the activities of the detenu are prejudicial to public health or that by the said activities, the even tempo of life is disturbed. The offence registered against the detenu is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the detenu has violated law and order, and it cannot be said that the detenu has violated public order. Moreover, the detaining authority has not stated as to on what basis it has come to the conclusion that the detenu will be released on bail on presentation of bail application, therefore, the order of detention is required to be quashed.

In the result, the petition is allowed. For the reasons recorded in the oral judgment and order, the special civil application is allowed. The impugned order of detention dated 10.02.2006 passed by the District Magistrate, Kheda District is set aside. The detenu – Kamruddin @ Mamu Habibbhai Kadiwala (Momin) is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

Learned advocate for the petitioner-detenu made a statement that the petitioner shall not leave limits of Patan town except for attending criminal cases or for marking presence before the concerned police station for a period up to 31.08.2006. This voluntary statement is made by the learned advocate for the petitioner. It is for the concerned authority to monitor the same.

(***P.B.Majmudar, J.***)

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